

Cause No. 21-09-1136-CV  
*John E. Kolb v. J.P. Morgan Chase Bank, N.A.*, In the 267<sup>th</sup> Judicial District Court  
Goliad County, Texas

**Exhibit “A”**

**Index Of State Court File Documents**

A-1	Docket Sheet	
A-2	Plaintiff’s Original Petition	9/24/2021
A-3	Return of Service of Citation on JPMorgan Chase Bank	9/28/2021
A-4	Defendant’s Original Answer and Affirmative Defenses to Plaintiff’s Original Petition	10/25/2021

# **Exhibit “A-1”**

https://research.txcourts.gov/CourtRecordsSearch/ViewCasePrint/ddf6dcacddb65ba5a3c817b2393ce2ab

## Case Information

### John E. Kolb vs. J. P. Morgan Chase Bank, N.A.

21-09-1136-CV

Location

Goliad County - District Clerk

Case Category

Civil - Other Civil

Case Type

Other Civil

Case Filed Date

9/24/2021

Judge

267th District Court

## Parties <sup>2</sup>

Type	Name	Attorneys
Plaintiff	John E. Kolb	John McDowell
Defendant	J. P. Morgan Chase Bank, N.A.	

## Events <sup>3</sup>

Date	Event	Type	Comments	Documents
9/24/2021	Filing	Petition	Plaintiff Original Petition with Civil Process Request	Civil Process Request - Defendant.pdf, Plk Petition.pdf
9/28/2021	Filing	No Fee Documents	Return of Service P286514_001.pdf	P286514_001.pdf
10/25/2021	Filing	Answer/Response	KOLB - General Denial_Answer	KOLB - General Denial_Answer(18461216



# **Exhibit “A-2”**

21-09-1136-CV  
No. \_\_\_\_\_

JOHN E. KOLB	§	IN THE DISTRICT COURT OF
	§	
v.	§	GOLIAD COUNTY, TEXAS
	§	
J.P. MORGAN CHASE BANK N.A.	§	267TH JUDICIAL COURT

### **PLAINTIFF'S ORIGINAL PETITION**

Plaintiff, John E. Kolb files his Plaintiff's Original Petition and in support of same, would show as follows:

### **DISCOVERY CONTROL PLAN**

1. Discovery in this case is intended to be conducted under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

### **CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief of \$75,000 or less and non-monetary relief. The damages sought are within the jurisdictional limits of this Court.

### **PARTIES**

3. Plaintiff is a resident of Goliad County and his identification is the following: Last three numbers of his State ID is 149 and last three numbers of SSN is 139.

4. Defendant J.P. Morgan Chase Bank, N.A. is a foreign financial corporation authorized to transact business in the state of Texas. Defendant may be served by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201 or wherever they may be found.

5. Defendant was, at all times material hereto, acting through its agents and employees who were acting in the course and scope of their employment and agency for the use and benefit of Defendant.

**RULE 47 NOTICE**

6. Pursuant to the requirements of Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff states that it is seeking monetary relief not to exceed \$75,000 which includes damages of any kind, penalties, costs, expenses, pre-judgment interest, and monetary fees.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over the parties, jurisdiction over the subject matter of this dispute, and jurisdiction to award all relief prayed for herein.

8. Venue is proper in Goliad County, Texas, because Goliad County is where all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002.

9. To the extent the above-named Defendant is conducting business pursuant to a trade name or assumed name, then suit is brought against them pursuant to the terms of Rule 28, Texas Rules of Civil Procedure, and the Plaintiff hereby demands that upon answering this suit, that they answer in their correct legal name and assumed names.

**FACTUAL BACKGROUND**

10. In September 2020, Mr. Kolb discovered that he had been a victim of repeated and systematic fraud by Mr. Don Lee Gonzalez. Without the knowledge or authorization of Mr. Kolb, Mr. Gonzalez gained access to information related to the Kolb Chase Card Account and made charges against that account for more than two years. Mr. Kolb never provided the account information to Mr. Gonzalez and does not know how he was able to obtain information related to the Kolb Chase Card Account.

11. As soon as the fraudulent activity was discovered, with the help of an assistant Mr. Kolb conducted a review of the Kolb Chase Card Account statements and identified approximately

\$88,000 of unauthorized charges by Mr. Gonzalez over the years 2018, 2019 and 2020. Mr. Kolb immediately notified Chase of the fraudulent activity and was told that Chase would, according to their internal policy, credit the charges for a period of two years prior to notification but would then pursue charges against Mr. Gonzalez. Mr. Kolb then confronted Mr. Gonzalez and a meeting was held on October 2, 2020. At that meeting, Mr. Gonzalez confessed and admitted to making the unauthorized charges and asked Mr. Kolb to accept a payment plan from Mr. Gonzalez to repay the amounts due and avoid prosecution of charges by Chase. Mr. Kolb agreed to accept a repayment plan that day, but on the following Sunday, October 4, 2020, Mr. Gonzalez committed suicide.

12. Following this tragic event, Mr. Kolb, with the assistance of his son Jay Kolb, contacted Chase, again reported the fraudulent charges, whereupon Chase issued a credit of approximately \$52,000 in settlement of the disputed charges. Two months later, on the December 2020 statement for the Kolb Chase Card Account, the credit was reversed, and the charges reinstated. Chase Card Services was then contacted, and, over the course of many weeks, various explanations and excuses were made as to why the charges were reinstated. Mr. Kolb offered additional facts and reiterated the fact that the charges were not authorized, but these explanations were not accepted.

13. Plaintiff requests damages in an amount at least equal to the amount agreed to by Chase.

14. Plaintiff has incurred attorneys' fees, costs, and expenses as a result of Defendant's failure to return the funds. Consequently, Plaintiff also seeks to recover its attorneys' fees, costs, and expenses from Defendant through a trial and appeal.

**RULE 193.7 NOTICE**

15. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives actual notice to Defendant that any and all documents produced may be used against the Defendant producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

WHEREFORE, Plaintiff John E. Kolb prays that Defendant be cited to appear and answer herein, be found liable to Plaintiff and that Plaintiff should recover its damages, pre-judgment and post-judgment interest, court costs, and attorneys' fees, costs, and expenses, and for such other and further relief to which Plaintiff may show himself justly entitled at law or in equity.

Respectfully submitted,

**MCDOWELL LAW GROUP, L.L.P.**

/s/ John T. McDowell

John T. McDowell

jtm@houstontrialattorneys.com

State Bar No. 13570850

603 Avondale Street

Houston, Texas 77006

Telephone (713) 655-9595

Facsimile (713) 655-7868

**ATTORNEYS FOR PLAINTIFF**



**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gina Holder on behalf of John McDowell  
 Bar No. 13570850  
 gmh@houstontrialattorneys.com  
 Envelope ID: 57597707  
 Status as of 9/27/2021 8:29 AM CST

Associated Case Party: JohnE.Kolb

Name	BarNumber	Email	TimestampSubmitted	Status
John T.McDowell		jtm@houstontrialattorneys.com	9/24/2021 5:27:44 PM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Ligia Castillo		llc@houstontrialattorneys.com	9/24/2021 5:27:44 PM	SENT
Gina Holder		gmh@houstontrialattorneys.com	9/24/2021 5:27:44 PM	SENT

## **Exhibit “A-3”**

**CAUSE NO. 21-09-1136-CV**

JOHN E. KOLB  
**PLAINTIFF**

VS.

J.P. MORGAN CHASE BANK N.A.  
**DEFENDANT**

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IN THE 267th District Court

GOLIAD COUNTY, TX

**RETURN OF SERVICE**

**ON Monday, September 27, 2021 AT 1:34 PM**

CITATION, PLAINTIFF'S ORIGINAL PETITION for service on J.P. MORGAN CHASE BANK N.A. C/O REGISTERED AGENT CT CORPORATION SYSTEM came to hand.

**ON Tuesday, September 28, 2021 AT 2:45 PM, I, DON ANDERSON, PERSONALLY**

**DELIVERED THE ABOVE-NAMED DOCUMENTS TO:** J.P. MORGAN CHASE BANK N.A. C/O REGISTERED AGENT CT CORPORATION SYSTEM, by delivering to Kirk Atkins, 1999 BRYAN STREET, SUITE 900, DALLAS, DALLAS COUNTY, TX 75201.

My name is DON ANDERSON. My address is 1900 Brown, BALCH SPRINGS, TX 75180. I am a private process server certified by the Texas Judicial Branch Certification Commission (PSC 4232, expires 8/31/2022). My e-mail address is info@easy-serve.com. My date of birth is 7/14/1956. I am in all ways competent to make this statement, and this statement is based on personal knowledge. I am not a party to this case and have no interest in its outcome. I declare under penalty of perjury that the foregoing is true and correct.

Executed in DALLAS COUNTY, TX on Tuesday, September 28, 2021.

/S/ DON ANDERSON

John Kolb

Doc ID: 286514\_1

MARY ELLEN FLORES  
GOLIAD COUNTY DISTRICT CLERK  
PO BOX 50  
GOLIAD, TX 77963



JOHN T. MCDOWELL  
ATTORNEY FOR PLAINTIFF  
603 AVONDALE STREET  
HOUSTON, TX 77006

**REGULAR CITATION**

To: J.P. MORGAN CHASE BANK N.A.  
CT Corporation System, Registered Agent  
1999 Bryan Street, Suite 900  
Dallas, Texas 75201  
(Or wherever he/she may be found)

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

Court: 267TH JUDICIAL DISTRICT

Cause No.: 21-09-1136-CV

Date of Filing: September 27th 2021

Document: Plaintiff's Original Petition

Parties in Suit: JOHN E. KOLB, Plaintiff vs. J.P. MORGAN CHASE BANK N.A., Defendant

Clerk: Mary Ellen Flores, Goliad County District Clerk  
Goliad, Texas 77963

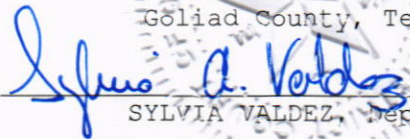
Party or Party's Attorney:

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Petition accompanying this petition and made a part hereof.

The officer executing this writ shall promptly serve this according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court of Goliad, Texas, this the 27th of September, 2021.

Mary Ellen Flores, District Clerk  
267TH JUDICIAL DISTRICT  
Goliad County, Texas

By:   
SYLVIA VALDEZ, Deputy

**SERVICE RETURN**

Came to hand on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_ .m., and  
executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_ .m., at  
\_\_\_\_\_, in \_\_\_\_\_ County, \_\_\_\_\_ by  
delivering to the within named \_\_\_\_\_

In person a true copy of this citation, with attached copy(ies) of the \_\_\_\_\_  
\_\_\_\_\_ at the \_\_\_\_\_

☐ Not executed. The diligence se in finding defendant being \_\_\_\_\_

☐ Information received as to the whereabouts of defendant being \_\_\_\_\_

Service fee: \_\_\_\_\_ Sheriff/Constable

\_\_\_\_\_ County, Texas

Service ID NO. \_\_\_\_\_

\_\_\_\_\_  
Deputy/authorized person

**VERIFICATION**

On this day personally appeared \_\_\_\_\_ known to me to  
be the person whose name is subscribed on the foregoing instrument and who has stated:  
upon penalty of perjury, I attest that the foregoing instrument has been executed by me  
in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of  
eighteen years and I am not a party to or interested in the outcome of this suit, and  
have authorized by the Goliad County Courts to service process.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

## **Exhibit “A-4”**

CAUSE NO. 21-09-1136-CV

JOHN E. KOLB,

*Plaintiff,*

v.

J.P. MORGAN CHASE BANK, N.A.,

*Defendant.*

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IN THE DISTRICT OF

GOLIAD COUNTY, TEXAS

267<sup>th</sup> JUDICIAL COURT

**DEFENDANT’S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES TO  
 PLAINTIFF’S ORIGINAL PETITION**

COMES NOW, Defendant J.P. Morgan Chase Bank, N.A., more properly identified as JPMorgan Chase Bank, N.A., (“*Chase*”), and files this its Original Answer and Affirmative Defenses to Plaintiff’s Original Petition (the “*Petition*”), and show the court as follows:

**GENERAL DENIAL**

1. Chase generally denies each and every claim, charge, and allegation contained in Plaintiff’s Petition as well as any amendments and supplementations thereto, as provided by TEX. R. CIV. P. 92 and requests that the Court require Plaintiff to prove his claims by a preponderance of the credible evidence or by clear and convincing evidence as required by law.

**AFFIRMATIVE DEFENSES**

1. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that Plaintiff’s claims are barred in whole or in part by reason of Chase’s compliance with applicable contractual provisions, statutes, regulations, agency interpretations, and other provisions of law.

2. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands and/or estoppel, in all its forms.

3. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that Plaintiff's claims are barred in whole or in part by waiver and/or laches.

4. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that Plaintiff's claims are barred in whole or in part by failure to state a claim upon which relief can be granted.

5. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that the Petition fails to state a claim upon which an award of attorney's fees and/or costs can be granted.

6. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that Plaintiff's claims are barred in whole or in part by unjust enrichment.

7. In addition to and/or alternatively, without waiving the foregoing, Chase asserts that all conditions precedent to Plaintiff's rights to recover, if any, have not been satisfied, have not occurred or have not been waived.

8. In addition to and/or alternatively, Chase asserts that Plaintiff's claims are barred, in whole or in part, because Chase's acts and/or omissions were not the cause of Plaintiff's damages, if any. Rather, Plaintiff's damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and/or entities, including Plaintiff herself, and the acts omissions, or breaches were intervening and superseding cause of Plaintiff's damages if any.

9. In addition to and/or alternatively, Chase asserts that Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to mitigate damages, if any.



10. In addition to and/or alternatively, Chase asserts that Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to make payments as agreed, and therefore were in default and breached the agreement.

11. Chase reserves the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation and discovery.

#### **IV. RULE 193.7 NOTICE**

12. Rule 193.7 of the Texas Rules of Civil Procedure provides that production of a document by Plaintiff in response to a written request for discovery from Chase authenticates the document for use against Plaintiff in any pretrial proceeding or at the trial of the case unless Plaintiff timely objects, in writing or on the record, stating the specific basis for the objection. Chase hereby provides Plaintiff with the required notice that all documents produced by Plaintiff may be used at trial of this case.

#### **V. REQUEST FOR PRESERVATION OF EVIDENCE**

13. Request is hereby made that Plaintiff preserve all records or written or oral communications or contact, or attempted communications or contact, with Chase or any of its subsidiaries or affiliates. Destruction of such evidence shall constitute spoliation.

For the reasons stated above, Chase requests that Plaintiff take nothing by his Petition, and for such other and further relief for which it may be entitled.

Respectfully submitted,

By: /s/Kathryn B. Davis

**GREGG D. STEVENS**

Texas State Bar No. 19182500

**McGLINCHEY STAFFORD PLLC**

Three Energy Square

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**KATHRYN B. DAVIS**

Texas State Bar No. 24050364

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1001 McKinney Street, Suite 1500

Houston, Texas 77002

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Facsimile: (713) 520-1025

[kdavis@mcglinchey.com](mailto:kdavis@mcglinchey.com)

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice has been filed with the clerk of court and served on all parties in accordance with the TEXAS RULES OF CIVIL PROCEDURE on this 25<sup>th</sup> day of October, 2021.

/s/ Kathryn B. Davis

**KATHRYN B. DAVIS**

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Linda Weaver on behalf of Kathryn Davis  
 Bar No. 24050364  
 lweaver@mcglinchey.com  
 Envelope ID: 58481123  
 Status as of 10/25/2021 8:01 AM CST

Associated Case Party: JohnE.Kolb

Name	BarNumber	Email	TimestampSubmitted	Status
John T.McDowell		jtm@houstontrialattorneys.com	10/25/2021 7:26:08 AM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Ligia Castillo		llc@houstontrialattorneys.com	10/25/2021 7:26:08 AM	SENT
Gina Holder		gmh@houstontrialattorneys.com	10/25/2021 7:26:08 AM	SENT
Linda A.Weaver		lweaver@mcglinchey.com	10/25/2021 7:26:08 AM	SENT
Angelia Foster		afoster@mcglinchey.com	10/25/2021 7:26:08 AM	SENT

Associated Case Party: J. P. Morgan Chase Bank, N.A.

Name	BarNumber	Email	TimestampSubmitted	Status
Kasey Davis		kdavis@mcglinchey.com	10/25/2021 7:26:08 AM	SENT
Gregg D.Stevens		gstevens@mcglinchey.com	10/25/2021 7:26:08 AM	SENT